

## § 170.115

## 25 CFR Ch. I (4–1–06 Edition)

seek assistance in resolving the problem.

### ELIGIBLE USES IF IRR PROGRAM FUNDS

#### § 170.115 What activities may be funded with IRR Program funds?

(a) IRR Program funds may be used:

(1) For all of the items listed in appendix A to this subpart;

(2) For other purposes identified in this part; or

(3) For other purposes recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and § 170.156 and approved by FHWA or BIA pursuant to § 170.117.

(b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

#### § 170.116 What activities are not eligible for IRR Program funding?

IRR Program funds cannot be used for any of the following:

(a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;

(b) Structures and erosion protection unrelated to transportation and roadways;

(c) General reservation planning not involving transportation;

(d) Landscaping and irrigation systems not involving transportation programs and projects;

(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;

(f) Purchase of equipment unless authorized by Federal law or in this part; or

(g) Condemnation of land for recreational trails.

#### § 170.117 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eli-

gible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4058-MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the IRR Program or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the IRR Program Coordinating Committee before denying a request. BIA and FHWA will send copies of all eligibility determinations to the IRR Program Coordinating Committee and BIA Regional offices.

(c) If either BIA or FHWA fails to issue the requesting tribe a timely response to the eligibility inquiry, the proposed use will be deemed to be allowable for that specific project.

### USE OF IRR AND CULTURAL ACCESS ROADS

#### § 170.120 What restrictions apply to the use of an Indian Reservation Road?

Indian Reservation Roads (IRRs) must be open and available for public use. However, the public authority having jurisdiction over these roads may:

(a) Restrict road use or close roads temporarily when required for public safety, fire prevention or suppression, fish or game protection, low load capacity bridges, prevention of damage to unstable roadbeds, or as contained in §§ 170.122 and 170.813;

(b) Conduct engineering and traffic analysis to determine maximum speed

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limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(c) Erect, maintain, and enforce compliance with signs and pavement markings.

### **§ 170.121 What is a cultural access road?**

(a) A cultural access road is a public road that provides access to sites for cultural purposes as defined by individual tribal traditions, which may include, for example:

- (1) Sacred and medicinal sites;
- (2) Gathering medicines or materials such as grasses for basket weaving; or
- (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A tribal government may unilaterally designate a tribal road as a cultural access road. A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a tribal government to designate a non-tribal road as a cultural access road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural access roads may be included in the IRR Inventory if they meet the definition of an IRR.

### **§ 170.122 Can a tribe close a cultural access road?**

(a) A tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

- (1) During periods when the tribe or tribal members are involved in cultural activities; and
- (2) In order to protect the health and safety of the tribal members or the general public.

(b) Cultural access roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.121(c).

## SEASONAL TRANSPORTATION ROUTES

### **§ 170.123 What are seasonal transportation routes?**

Seasonal transportation routes are non-recreational transportation routes in the IRR Inventory that provide access to Indian communities or villages and may not be open for year-round use. They include snowmobile trails, ice roads, and overland winter roads.

### **§ 170.124 Does the IRR Program cover seasonal transportation routes?**

Yes. IRR Program funds can be used to build seasonal transportation routes and a tribe may request that BIA include seasonal transportation routes in the IRR Inventory.

(a) Standards for seasonal transportation routes are found in the design standards identified in appendix B to subpart D. A tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) Construction of a seasonal transportation route requires a right-of-way or use permit.

## IRR HOUSING ACCESS ROADS

### **§ 170.127 What terms apply to access roads?**

(a) *IRR housing access road* means a public road on the IRR System that provides access to a housing cluster.

(b) *IRR housing street* means a public road on the IRR System that provides access to adjacent homes within a housing cluster.

(c) *Housing cluster* means three or more existing or proposed housing units.

### **§ 170.128 Are housing access roads and housing streets eligible for IRR Program funding?**

Yes. IRR housing access roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the IRR Program. Tribes, following the transportation planning process as required in subpart D, may include housing access roads and housing street projects on the Tribal Transportation Improvement Program (TTIP). IRR Program funds are available after the projects are listed on the FHWA-approved IRR/TIP.